

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

IN RE EMELDA SNYPE,	:	PER CURIAM OPINION
	:	
Relator,	:	
	:	CASE NO. 2011-P-0095
- vs -	:	
	:	
JOHN ENLOW, IN HIS OFFICIAL	:	
CAPACITY AS JUDGE OF THE	:	
PORTAGE COUNTY COURT OF	:	
COMMON PLEAS,	:	
	:	
Respondent.	:	

Original Action for Writ of Mandamus.

Judgment: Petition dismissed.

Emelda Snype, pro se, 14837 Detroit Avenue, #208, Lakewood, OH 44107 (Relator).

John Enlow, pro se, Portage County Court of Common Pleas, 203 Main Street, Ravenna, OH 44266 (Respondent).

PER CURIAM

{¶1} Pending before this court is relator, Emelda Snype's, Petition for Writ of Mandamus. Respondent, Judge John Enlow of the Portage County Court of Common Pleas, has filed a Motion to Dismiss or in the Alternative for Summary Judgment, on the grounds that the Petition is procedurally defective and that the relief sought has been obtained, thereby rendering the Petition moot. For the following reasons, Snype's Petition is dismissed.

{¶2} On November 28, 2011, Snype filed a Petition for Writ of Mandamus in this court. The Petition states that its purpose is “to enforce a Judgment and Order.” It alleges that “Judge John Enlow signed an order and journal entry stating that he would sign his signed order,” and that Judge Enlow abused his discretion “by not signing the Order and Journal.”

{¶3} Attached to the Petition is an October 3, 2011 Order and Journal Entry, from the Portage County Court of Common Pleas Case No. 2010 CV 01279. The Order, signed by the judge, states that a motion for summary judgment has been filed in the case, and: “IT IS, THEREFORE, ORDERED that this case shall come on for non-oral hearing on summary judgment 21 days from the date of this entry.” Snype’s Petition claims: “As of the day of this filing [November 28, 2011], Judge Enlow has not signed his order, as he signed his signature to.”

{¶4} On January 3, 2012, Judge Enlow filed his Motion to Dismiss or in the Alternative for Summary Judgment. Judge Enlow raises several arguments for dismissal.

{¶5} Judge Enlow asserts that the Petition was not “in the name of the state on the relation of the person applying,” as required by R.C. 2731.04. Additionally, Snype failed to include the parties’ addresses in the Petition’s caption, as required by Civil Rule 10(A). This court has held that “a court may sua sponte dismiss a petition for an extraordinary writ when it is improperly captioned.” *Hill v. Kelly*, 11th Dist. No. 2011-T-0094, 2011-Ohio-6341, ¶ 4, citing *Maloney v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 227, 181 N.E.2d 270 (1962).

{¶6} Judge Enlow also asserts that Snype’s Petition is moot, inasmuch as he has already ruled on the summary judgment motions that were the subject of the

October 3, 2011 Order and Journal Entry. The Ohio Supreme Court has often held that mandamus will not lie to “compel the performance of a duty that has already been performed.” (Citation omitted.) *State ex rel. Jones v. Ansted*, __ Ohio St.3d __, 2012-Ohio-109, __ N.E.2d __, ¶ 2; *State ex rel. Bowman v. Asmann*, 113 Ohio St. 394, 395, 149 N.E. 328 (1925) (“manifestly a writ of mandamus would not issue to compel the respondents to perform a legal duty which they had already performed”).

{¶7} Attached to the Motion to Dismiss are several Orders and Journal Entries, all dated December 13, 2011, from the Portage County Court of Common Pleas Case No. 2010 CV 01279, granting summary judgment in favor of defendants All American Inspection, LLC, Paula K. Marquard, Robert Beverage, AC Loan Care and Adam Stodnata (aka AC Lawn Care and Adam Cognata); and denying Snype’s motion for summary judgment against the same defendants.

{¶8} Snype has not responded to Judge Enlow’s Motion to Dismiss.

{¶9} “Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” R.C. 2731.01.

{¶10} In the present case, Snype has failed to caption her Petition in the name of the state and otherwise comply with the Civil Rules. Snype has also failed to identify an act enjoined upon Judge Enlow as a duty which he has not performed. Accordingly, Judge Enlow’s Motion to Dismiss is well-taken.

{¶11} For the reasons stated in Judge Enlow’s Motion to Dismiss, Snype’s Petition for Writ of Mandamus is dismissed.

DIANE V. GRENDALL, J., CYNTHIA WESTCOTT RICE, J., THOMAS R. WRIGHT, J.,
concur.